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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,630	06/08/2007	Darren John Hotchkin	043153-9104-00	3309
23409 7590 02/13/2012 MICHAEL BEST & FRIEDRICH LLP (Mkc) 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER				
ADDIE, RAYMOND W				
ART UNIT		PAPER NUMBER		
3671				
NOTIFICATION DATE		DELIVERY MODE		
02/13/2012		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mkeipdocket@michaelbest.com

Office Action Summary**Application No.**

10/591,630

Applicant(s)

HOTCHKIN, DARREN JOHN

Examiner

RAYMOND W. ADDIE

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,6,7,9-12 and 14-24 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,6,7,9-12 and 14-24 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CIB) Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Objections

1. Claim 24 is objected to because of the following informalities: The phrase "the end upright member" in line 11, should be --the end upright members--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6, 7, 9-12, 14-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 24 recite the limitation "the internal structural framework" in paragraph (b). There is insufficient antecedent basis for this limitation in the claim. The claims only provide for a structural framework, and do not specify or require the structural framework to be "internal" to any other structure.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krage et al.

US 5,425,594 in view of Casey US 4,496,264.

Krage et al. discloses a lightweight, less than 30 lbs. for a 6.5' barrier wherein the barrier is a stand-alone barrier (300) that does not require additional mass to function as a barrier. The barrier comprising:

A body (12) having end walls, a recessed top wall, a bottom wall and side panels (20, 16, 18, 14), respectively, the side panels mounted to opposite sides of the barrier for deflecting impacting vehicles.

A structural framework (38) for resisting collapse of the barrier (300) in response to impact of a vehicle. The framework comprising:

A pair of upright members (44) disposed between the ends of the structural frame (38).

A pair of longitudinal members (40) extending along the length of the barrier (38) and connected to each upright member, as by welding.

Wherein the interconnected arrangement of upright and longitudinal members provides the structural framework (38) with sufficient rigidity for resisting direct collapse of the barrier in the regions of the vehicle impact and from uncontrolled twisting of the barrier around the longitudinal barrier axis. See Col. 4, Ins. 4-44.

Further wherein the body (12) of the barrier is made of low density polyethylene, and does not make a substantial contribution to the rigidity of the barrier.

Although Krage et al. discloses diagonal braces can be added to provide increased rigidity to the frame (38). Krage et al. does not disclose is using more than two upright members.

However, Casey teaches it is known to provide a vehicle barrier with a plurality of upright members (22) disposed along the length of the barrier (at least 4 upright members are shown in Fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the vehicle barrier of Krage et al., with additional upright members disposed along the length of the barrier, as taught by Casey, in order to increase the rigidity of the barrier.

With respect to Claims 6, 9, 10 Krage et al. discloses the structural framework (38) is made from ASTM-A36 or AISI M-120 steel. See Col. 4, Ins. 17-27. And can weigh less than 30 lbs for 6.5' barrier.

With respect to claims 11, 12 Krage et al. discloses the structural framework can be made of angle beams, flat bars or sheet metal, such as galvanized steel. Wherein the upright braces (44) can be mounted to the sidewalls (14) by bolts. See Col. 3, Ins. 52-53, Col. 4, Ins. 17-27, Col. 6, Ins. 19-29.

With respect to claims 14, 15 Krage et al. discloses the longitudinal members (40) can be positioned about 20" above the bottom wall (18) and the barrier is approximately 33" in height. Krage et al. also illustrates in Fig. 6, the longitudinal members (40) are positioned in the upper half of the barrier.

With respect to claim 17 Krage et al. does not disclose is using more than two upright members. However, Casey teaches it is known to provide a vehicle barrier with a plurality of upright members (22) disposed along the length of the barrier (at least 4 upright members are shown in Fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the vehicle barrier of Krage et al., with additional upright members disposed along the length of the barrier, as taught by Casey, in order to increase the rigidity of the barrier.

With respect to claim 19 Krage et al. discloses the side panels (14) can comprise corrugated panel ribs (22).

With respect to claims 20-22 Krage et al. discloses the side panels (14) of the barrier (12) diverge outwardly away from each other. And a lower side panel on each side of the barrier that prevents vehicle tires from penetrating the barrier and becoming engaged with the barrier. See Fig. 1, adjacent reference arrows (10, 14).

Wherein the panels extend to a location vertically above the longitudinal members and form a recess in a top (16) of the barrier. See Figs. 1-4.

With respect to claim 23 Krage et al. the end walls (20) of the barrier comprise a plurality of hinge plates (30) having respective openings for receiving a hinge pin (36). See Col. 2, Ins. 66-68.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krage et al. US 5,425,594 in view of Casey US 4,496,264 as applied to claim 17 above, and further in view of Anderson US 2003/0086761 A1.

Krage et al. in view of Casey disclose the use of a 6.5' lightweight barrier (12) but do not disclose how the barrier is moved from place to place. However, Anderson teaches it is known to attach a lifting ring (30) to an opening in a multi-purpose barrier member, in order to facilitate lifting the barrier with a crane or the like. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the barrier of Krage et al. in view of Casey, with lifting means, as taught by Anderson, in order to facilitate lifting the barrier with a crane or the like. See [0022].

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krage et al. US 5,425,594 in view of Casey US 4,496,264 as applied to claim 1 above, and further in view of Cobb et al. US 5,054,954.

Krage et al. in view of Casey disclose the use of a 6.5' lightweight plastic barrier (12) having a steel structural frame (38) but do not disclose making the barrier body (12) from steel. However, Cobb et al. teaches it is known to make vehicle barriers (12) comprising a plurality of side panels (14) from plastics, composites or mild gauge steel sheet, that allows deformation of the panel, but will resist penetration of the panel under the average type of impact which will be provided by a vehicle during use.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the barrier body of Krage et al. in view of Casey from mild gauge steel sheet, as taught by Cobb et al., since plastic and sheet steel are art recognized equivalents. See Col. 8, Ins. 37-50.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 6, 7, 9-12, 14-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAYMOND W. ADDIE whose telephone number is (571)272-6986. The examiner can normally be reached on 8am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RAYMOND W. ADDIE/
Primary Examiner, Art Unit 3671

2/7/2012